

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5430-01
Bill No.: Perfected HB 1910
Subject: Contracts and Contractors; Labor and Management; State Departments
Type: Original
Date: April 21, 2006

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Administration, Division of Facilities Management, Design and Construction and Division of Purchasing and Materials Management, the Department of Economic Development, Division of Workforce Development, the Department of Revenue, Missouri State University, and the University of Missouri** assume this proposal would have no fiscal impact on their organizations.

Officials from the **Department of Economic Development, Division of Tourism, Lincoln University, Metropolitan Community College, Hickory County, Jasper County, and the City of Centralia**, assumed a previous version of this proposal would have no fiscal impact on their organizations.

Officials from the **Department of Conservation, the Department of Labor and Industrial Relations, the Department of Transportation, St. Louis County Community College, St. Louis County, Cass County, and Parkway School District** assumed that a similar proposal would have no fiscal impact on their organizations.

ASSUMPTION (continued)

Officials from the **Department of Elementary and Secondary Education** deferred to the Department of Labor and Industrial Relations as to the fiscal impact of this proposal.

Officials from the **Department of Labor and Industrial Relations** (DOLIR) assume this proposal would result in additional phone calls from constituents to the Division of Labor Standards. In addition, the proposed legislation would require the Labor and Industrial Relations Commission to conduct evidentiary hearings and issue final agency determinations on appeals from PLA determinations of state or political subdivisions. DOLIR estimated that the proposed legislation would require .5 FTE clerical/administrative professional and .25 FTE staff counsel, and submitted an estimated cost of \$30,957 for FY 2007, \$34,054 for FY 2008, and \$34,906 for FY 2009.

Oversight assumes that any additional requirements created by the proposal could be absorbed with existing resources. If unexpected or unforeseen additional responsibilities are created by this proposal, or if multiple proposals are enacted which increase the Department's workload, resources could be requested through the budget process.

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal could have a direct fiscal impact on small businesses in the construction industry, and would impose additional record-keeping requirements on small businesses who have independent contractors.

DESCRIPTION

Project Labor Agreements

The state and its agencies and instrumentalities, when engaged in procuring or letting contracts for construction of a project that is funded by greater than fifty percent of state funds, would be required to ensure that bid specification, project agreements, and other controlling documents entered into, required, or subject to approval by the state, agency, or instrumentality do not require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or related projects; or discriminate against bidders, offerors, contractors, or subcontractors for entering or refusing to enter or to remain signatory or otherwise adhere to agreements with one or more labor organizations on the same or related construction projects. The state and its agencies and instrumentalities could not issue grants or enter into cooperative agreements for construction projects, a condition of which requires that bid specifications, project agreements, or other controlling documents pertaining to the grant or cooperative agreement contain any of the elements specified above.

The state and its agencies and instrumentalities would be required to exercise such authority as may be required to preclude a grant recipient or party to a cooperative agreement from imposing any of the elements specified above in connection with any grant or cooperative agreement awarded or entered into. Contractors or subcontractors would not be prohibited from voluntarily entering into such agreements.

The term "project labor agreement" would be defined as a multi-employer, multi-union pre-hire agreement designed to systemize labor relations at a construction site that is required by the state or a political subdivision of the state as a condition of a bid specification for a construction project, thereby insuring that all contractors and subcontractors on a project comply with the terms of a union-only project labor agreement.

DESCRIPTION (continued)

The state and its political subdivisions could enter into a union-only project labor agreement for the procurement of construction services on a project-by-project basis only on the condition that the state or political subdivision analyze the impact of a union-only project labor agreement and consider:

- Whether the union-only project labor agreement advances the interests of the public entity and its citizens;
- whether the union-only project labor agreement is appropriate considering the complexity, size, cost impact, and need for efficiency on the project;
- whether the union-only project labor agreement impacts the availability of a qualified work force; and
- whether the scope of the union-only project labor agreement has a business justification for the project as bid;

The state or political subdivision would be required to publish their findings in a document titled "Intent to Enter Into a Union Project Labor Agreement". That document would be required to establish a rational basis upon which the state or political subdivision bases its intent to require a union-only project labor agreement for the project. No fewer than fourteen days but no more than thirty days following publication of the notice of a public hearing, the state or political subdivision would be required to conduct a public hearing on whether to proceed with its intent to require a union-only project labor agreement; within thirty days of the public hearing, the state or political subdivision would be required to publish its determination on whether or not to require a union-only project labor agreement.

Any interested party could, within thirty days of the determination of the state or political subdivision, appeal to the Labor and Industrial Relations Commission for a determination as to whether the state or political subdivision complied with the proposed requirements for a union-only project labor agreement. The Labor and Industrial Relations Commission would consider the appeal under a rational basis standard of review.

The Labor and Industrial Relations Commission would hold a hearing on the appeal within sixty days of the filing of the appeal, and issue its decision within ninety days of the filing date of the appeal. Any party aggrieved from the Labor and Industrial Relations Commission decision could file an appeal with the Circuit Court of Cole County within thirty days of the commission's decision.

DESCRIPTION (continued)

No contractor or subcontractor could directly or indirectly receive a wage subsidy, bid supplement, or rebate for employment on a public works project if such wage subsidy, bid supplement, or rebate has the effect of reducing the wage rate paid by the employer on a given occupational title below the prevailing wage rate. In the event a wage subsidy, bid supplement, or rebate is lawfully provided or received, the entity providing and the entity receiving such subsidy, supplement, or rebate would be required to report the date and amount of such subsidy, supplement, or rebate to the public body within thirty days of receipt of payment. This disclosure report would be a public record.

Any interested person, employee, or an aggrieved contractor or subcontractor could allege a violation of the wage subsidy provisions. If the Division of Labor Standards determines that a violation existed, the division would assess and collect a penalty on behalf of the public body. In determining the dollar amount owed to the public body, the division would calculate double the dollar amount per hour that the wage subsidy, bid supplement or rebate reduced the wage rate paid by the employer below the prevailing wage rate for each hour that work was performed. If the division finds that the complaint filed under this section is frivolous and utterly without merit, or exhibits a pattern of harassing conduct on the part of the filing party, the commission may estop the filing party from filing further complaints against the charged party for a period of up to one year.

Nothing in the proposal would prohibit employers or other parties covered by the National Labor Relations Act from entering into agreements or engaging in any other activity arguably protected by law, nor could any aspect of the proposal be interpreted in such a way as to interfere with the labor relations of parties covered by the National Labor Relations Act.

Independent Contractors

This proposal would prohibit an employer from denoting or treating an employee as an independent contractor, contract laborer, or any other term or category implying the absence of an employment relationship in an attempt to avoid tax liability or reporting requirements for such employee. Any employer who incorrectly classifies an employee, as an independent contractor or otherwise, would be fined an amount equal to the tax due on the employee's taxable wages. The fine would be equal to three times the tax due on the employee's taxable wages if it is shown that the employer's failure to report wages is due to bad faith.

DESCRIPTION (continued)

Every employer doing business in the state would be required to obtain a federal W-9 form from each newly hired or rehired independent contractor. The forms would be compiled, distributed, and entered into the state directory of new hires.

An employer could not terminate or in any manner discriminate against an employee because the employee has communicated to the employer the intent to seek reclassification as an employee instead of an independent contractor or has communicated the intent to file an action alleging a violation of this section.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Administration

Division of Facilities Management, Design and Construction

Division of Purchasing and Materials Management

Department of Economic Development

Division of Workforce Development

Division of Tourism

Department of Labor and Industrial Relations

Lincoln University

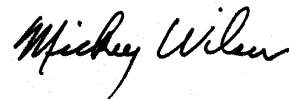
University of Missouri

Metropolitan Community College

Hickory County

Jasper County

City of Centralia



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Director
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